

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Service Agreement between the City of El Paso and Eduardo Diaz, as the consultant to develop a strategic plan for the Arts and Culture Department, for a fee in the amount of \$20,000.00.

ADOPTED this 14th day of September, 2004.

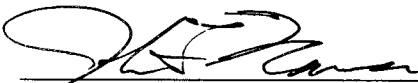
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:



Alejandrina Drew, Director
Arts & Culture Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

SERVICE AGREEMENT

THIS Service Agreement (“Agreement”) is entered into the date written on the signature page (“Effective Date”) between the following Parties:

CITY The City of El Paso, Texas,
 a Texas municipal corporation, and

CONSULTANT Eduardo Díaz

RECITALS

The City has determined that it requires the assistance of Consultant for the completion of a strategic plan for the Arts and Culture Department.

Consultant has experience and expertise in development and preparation of strategic plans for arts programs, and is qualified to provide the services required by the City.

FOR THESE REASONS, AND IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

ARTICLE ONE
Contractual Relationship

1.1 The City agrees to engage Consultant, and Consultant hereby agrees to perform services as required under this Agreement.

1.2 Consultant is an independent contractor. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the Parties or any of their officers, employees, agents or contractors.

1.3 Consultant shall not receive any compensation or benefits from the City, other than as expressly set forth in this Agreement or in a subsequent written agreement that is signed by both parties.

1.4 Consultant does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement or in any subsequent written agreement that is signed by both parties.

ARTICLE TWO

Scope of Services

2.1 Consultant will perform those services ("the Services") necessary to complete a strategic plan for the Arts and Culture Department. A detailed statement of the Services to be provided hereunder is contained in Exhibit "A," attached hereto and by this reference made a part hereof. The Services are scheduled to be performed during the period of September, 2004, through April, 2005.

2.2 All aspects of Consultant's Services shall be coordinated with the Director of the City's Arts and Culture Department, who shall use best efforts to facilitate the successful completion of Consultant's services and shall not unnecessarily impede Consultant's efforts.

ARTICLE THREE

Term and Termination

3.1 **Term.** Regardless of the date of execution, the Agreement will be in effect for a "Term" period from and including the Effective Date until terminated in accordance with this Article Three.

3.2 **Unilateral Termination.** The City may unilaterally terminate the Agreement for reasonable cause at any time, upon 30 days' written Notice to Consultant in accordance herewith. In the event the City terminates this Agreement, Consultant shall be entitled to compensation for services performed and approved expenses incurred, prior to the termination. In the event Consultant violates any of the terms of this Agreement, the City may terminate the Agreement without notice.

3.3 **Termination by Mutual Consent.** The Parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing.

3.4 **Time of Performance– Force Majeure.** The Services shall be undertaken and completed as appropriate to carry out the purposes of this Agreement. Except as otherwise provided, neither Consultant nor the City shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. "Force majeure" includes those causes generally recognized under Texas law as constituting impossible conditions.

ARTICLE FOUR

Fees and Expenses

4.1 **Fee.** Consultant agrees to perform the Services contemplated hereunder for a lump sum fee of Twenty Thousand and no/100 Dollars (\$20,000.00).

4.2 **Payment.** The City agrees to pay Consultant in installments in accordance with the Payment Schedule included as part of Exhibit “A” hereof. Consultant shall forward invoices to the City, including an itemized statement for the Services rendered under this Agreement, sufficiently in advance for City to make payments pursuant to the Payment Schedule. Upon satisfactory completion of the Services and within thirty (30) days of receipt by the City of the final invoice and statement of Services, the City shall pay Consultant the final installment due hereunder.

ARTICLE FIVE Indemnification

Consultant expressly agrees to indemnify and hold harmless the City with respect to any and all liabilities, damages, suits, causes of action, judgments and obligations resulting directly or indirectly from any negligence, gross negligence, intentional act, malpractice or willful misconduct on the part of Consultant, its employees, subcontractors, agents or representatives in the rendering of the Services under this Agreement.

ARTICLE SIX General Administrative Provisions

6.1 **Governmental Function.** Consultant expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The Parties hereby agree that the City enters into this Agreement in its capacity as a governmental entity for the purpose of performing a governmental function.

6.2 **City Not Obligated to Third Parties.** The City shall not be obligated or liable hereunder to any person other than Consultant.

6.3 **Modification of Agreement.** No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in a writing signed by the Parties hereto. No evidence of any waiver or modification shall be offered or received in evidence of any proceeding arising between the Parties out of or affecting this Agreement, or the rights or obligations of the Parties under this Agreement, unless such waiver or modification is in writing signed by the Parties hereto. The Parties further agree that the provisions of this section 6.3 cannot be waived. Should either Party wish to modify this Contract, the Party shall give thirty (30) days’ written notice to the other Party as follows:

CITY:

City of El Paso
Attention: Mayor’s Office
Two Civic Center Plaza
10th Floor
El Paso, Texas 79901-1196

COPY TO: Arts and Culture Department
Two Civic Center Plaza
6th Floor
El Paso, Texas 79901-1196

CONSULTANT: Eduardo Díaz

6.4 **Complete Agreement.** This Agreement contains the complete agreement between the Parties concerning the Services.

6.5 **Severability.** All agreements and covenants contained herein are severable, and in the event any of them, with the exception of those contained in Articles One, Two, Four, and Five, shall be held to be invalid by any competent court, this Agreement shall be interpreted as though such invalid agreements or covenants were not contained therein.

6.6 **Choice of Law.** It is the intention of the Parties that this Agreement be construed in accordance with and under the laws of the State of Texas.

6.7 **Place of Performance.** The place where such services are to be performed is in the City and County of El Paso, State of Texas, or in such cities, states or nations as the City may require or permit. Venue shall be in El Paso County.

SIGNED this _____ day of _____, 2004.

ATTEST:

CITY OF EL PASO

Richarda Duffy Momsen
City Clerk

Joe Wardy, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John F. Nance
Assistant City Attorney

Debbie Hamlyn, D.C.A.O.
Quality of Life Services

EDUARDO DÍAZ

EXHIBIT “A”

Scope of Services

INTRODUCTION

The agency plan is intended to help the Arts and Culture Department accomplish the following:

1. Establish the department as a leader in advancing cultural development in the El Paso region;
2. Provide educational and technical support services to a diverse range of constituencies;
3. Increase the level of available funds to support organizations and artists;
4. Continue the presentation of excellent arts programming for the benefit of residents and visitors; and
5. Strengthen the department's internal infrastructure to better meet the cultural needs, interests and priorities of the region.

In addition there are related themes that will be explored during this project:

- ✓ ACD's role as a convener and bridge builder;
- ✓ ACD's role in promoting economic development;
- ✓ ACD's role in shaping arts public policy (including public art) and leading advocacy efforts;
- ✓ ACD's role as a program initiator to meet cultural development needs;
- ✓ ACD's role as an arts marketer, to expand audience development efforts and public participation in the arts and culture;
- ✓ ACD's role as a sustainer of institutions and artists; and
- ✓ ACD's role as program manager.

All of the above issues would be addressed in the final assessment report.

SCOPE OF WORK

The City of El Paso is currently in the process of completing a Public Art Master Plan. The Arts and Culture Department and the Consultant are playing key roles in this planning process. Given this commitment by both the department and consultant and that the public art planning process will have a direct impact on the department's operations and programs, it is proposed that the majority of the agency planning work begin in January 2005. By then, it is anticipated that the public art planning process will be near completion. If necessary, the agency plan timeline can be adjusted, pending the final completion of the public art master plan.

On the following pages, please find a detailed proposed scope of work and timeline. The timeline assumes an October 2004 start-up and can be adjusted per the Arts and Culture Department's needs and schedule.

TIMELINE

TASK	DETAIL	TIMELINE	RESPONSIBILITY
1) Prepare and finalize planning process.	Meet with ACD staff and DCAO for Quality of Life Depts. to refine scope of work, methodology and timeline.	Sept. 04	E. Díaz, .25 day on site ¹
2) Conduct review of documentation.	Complete review of all existing plan documents including those of other cultural agencies, local government and major arts funders. Organize appropriate planning documents from public educational institutions, civic organizations (chambers of commerce, convention and visitor's bureau, etc.) and other entities determined by ACD. Includes review of ACD's functions, programs and marketing publications.	Oct. 04	E. Díaz, .5 day F. Poteet, 1 day
3) Organize assessment-on-site process of meetings and interviews.	Convene and facilitate group and public meetings, individual interviews and exploratory meetings with potential partner agencies. This also includes an initial meeting with an ACD Subcommittee to explore issues, themes, needs and opportunities. Identified groupings will emerge producing meetings with artists, art organization representatives, business leaders, political leaders, educational leaders, human service leaders, funders and others to be determined. Also includes event calendar planning and accountability or measurement tool to evaluate cost effectiveness. The role of ACD Advisory Board in scheduling these meetings is critical. The role of the ACD Advisory Board and staff in observing some of these sessions will also be important.	Nov. 04	E. Díaz, (see 4. below)
4) Coordinate series of town hall meetings.	Convene three (3) sessions to obtain opinions, perceptions and knowledge of participants on the performing and visual arts, AIE Program, Direct Funding Program, Public Art and their impact on educational and economic development. Survey knowledge of ACD's activities and role in the community, as well as some cultural development concepts. Organize sessions in accessible community venues, in geographically dispersed areas of the city. ACD staff to assist with direct mail announcements and publicity and to work with city council representatives to advise constituents.	Nov. 04	E. Diaz, 4.5 days; 4 days-on-site; includes prep; daytime mtgs with stakeholder groups; evening town hall mtgs

¹ Consultant will be in El Paso as part of public art planning process and will meet with staff then.

TIMELINE, cont.

TASK	DETAIL	TIMELINE	RESPONSIBILITY
5) Develop plan for dissemination of public opinion surveys.	Written surveys distributed via arts organizations' databases. Request that <i>El Paso Times</i> publish a special survey insert. Post on ACD website with interactive device to facilitate survey return on-line. Distribute surveys at town hall meetings. Requires active participation of ACD staff.	Oct.-Dec. 04	E. Díaz, .25 day S. Phillips, 2.5 days (survey design)
6) Write assessment report.	Incorporating results from the above.	Mid-Jan. 05	E. Díaz, 1.5 days
7) Launch planning phase.	Consultant will use a facilitated process at a planning committee retreat to set vision and mission, and to respond to the assessment findings by establishing consensus goals and implementation steps. This will become the framework for the first draft (includes strategies, implementation plans and timelines).	Jan.-Feb. 05; early March 05 for receipt of first draft	E. Díaz 1.5 day; 1 day on-site; includes mtg prep F. Poteet, 3 days; 1 day on-site; includes mtg prep and first draft
8) Revise strategies, implementation plans and timelines.	Includes meetings to vet the plan draft with plan steering committee and roundtables of community stakeholders for their response.	Mid-March 05	E. Díaz, 2 days on-site
9) Finalize through conference calls with Subcommittee.	Finalize plan by conference call.	Late-March 05	E. Díaz, 1 day F. Poteet, 1.25 days
10) Make final presentations to DCAO, Subcommittee, ACD Board and in community meeting with key stakeholders.	Planning committee and board would need to approve plan prior to final on-site presentations.	Mid or late-April 05	E. Díaz, 1 day on-site

BUDGET

E. Díaz, 12.5 days @ \$850	\$ 11,475
F. Poteet 5.25 days @ \$750	3,938
S. Phillips 2.5 days at \$600	1,500
Production (plan document)	500
General and Administrative @ 7%	994
Travel	2,443
TOTAL	\$ 20,000

PAYMENT SCHEDULE

The following payment schedule will apply:

October 8, 2004:	\$2,857
November 19, 2004:	\$2,857
December 17, 2004:	\$2,857
January 14, 2005:	\$2,857
February 18, 2005:	\$2,857
March 18, 2005	\$2,857
Upon submittal of final draft (4/05)	\$2,858

PAYMENT FOR SERVICES AND RELATED COSTS

The budget reflects the above Scope of Work and Proposed Timeline only. The above price also includes reasonable telephone time for consultation and answering any questions related to the Scope of Work and is inclusive of all other fees and expenses to complete the Scope of Work outlined.

Any unanticipated or additional expenses to this project undertaken at the request of the Client, such as, but not limited to, additional copies of reports or other printing, mailing or additional or expanded surveys or other stand-alone documents (e.g., additional summary reports, synopses, additional interviews, etc.) not included in the above Scope of Work and Budget shall be billed to the Client at the same hourly rate indicated above (\$106.25 per hour). Consultant agrees to advise Client before any extra costs are incurred and billed to Client.

Should the Client request any additional on-site time following the submission of recommendations and the final report, an additional hourly charge will be agreed on by the Consultant and Client for such additional work, with the hourly fee not to exceed \$106.25.

The Client shall pay Eduardo Díaz the fee according to the schedule outlined above and in accordance to agreement regarding travel expenses.

DISCLAIMER OR WARRANTY AND LIABILITY

As Consultant, Eduardo Díaz warrants that his services, and those of his contractees, will be performed in a professional manner in accordance with applicable professional standards. Consultant gives no warranty, express or implied, as to the results of any

recommendations made in any reports provided to the Client under this Agreement. The Consultant will not be liable for any damages that result or are alleged to result from any recommendations or reports provided to the Client.